

EXHIBIT A

**Service of Process****Transmittal**

10/27/2020

CT Log Number 538468784

TO: Stephanie Mitchell
Siemens Energy & Automation, Inc.
800 North Point Parkway, Suite 450
Alpharetta, GA 30005-4499

RE: **Process Served in California**

FOR: Siemens Mobility, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: TOMMY CANTERBERRY, ETC., PLTF. vs. ACARA SOLUTIONS, INC., ETC., ET AL., DFTS.
// TO: SIEMENS MOBILITY, INC.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # 34202000286414

NATURE OF ACTION: Employee Litigation - Wrongful Termination

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 10/27/2020 at 01:42

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 10/27/2020, Expected Purge Date:
11/01/2020

Image SOP

Email Notification, Stephanie Mitchell stephanie.mitchell@siemens.com

Email Notification, Service Of Process Legal Department serviceofprocess.legaldepartment.us@siemens.com

Email Notification, Skip Lockard skip.lockard@siemens.com

Email Notification, Doreen Poole doreen.poole@siemens.com

Email Notification, Shawn Dorvit shawn.dorvit@siemens.com

Email Notification, Richard O'Connor richard.oconnor@siemens.com

Email Notification, Nicholas Bruno nicholas.bruno@siemens.com

Email Notification, Scott Slater Scott.slater@siemens.com

Email Notification, Barbara Kotick barbara.kotick@siemens.com



Service of Process

Transmittal

10/27/2020

CT Log Number 538468784

TO: Stephanie Mitchell
Siemens Energy & Automation, Inc.
800 North Point Parkway, Suite 450
Alpharetta, GA 30005-4499

RE: **Process Served in California**

FOR: Siemens Mobility, Inc. (Domestic State: DE)

Email Notification, Shane Kawka shane.kawka@siemens.com

Email Notification, Tamika Lynch tamika.lynch@siemens.com

SIGNED: C T Corporation System
ADDRESS: 155 Federal St Ste 700
Boston, MA 02110-1727

For Questions: 800-448-5350
MajorAccountTeam1@wolterskluwer.com

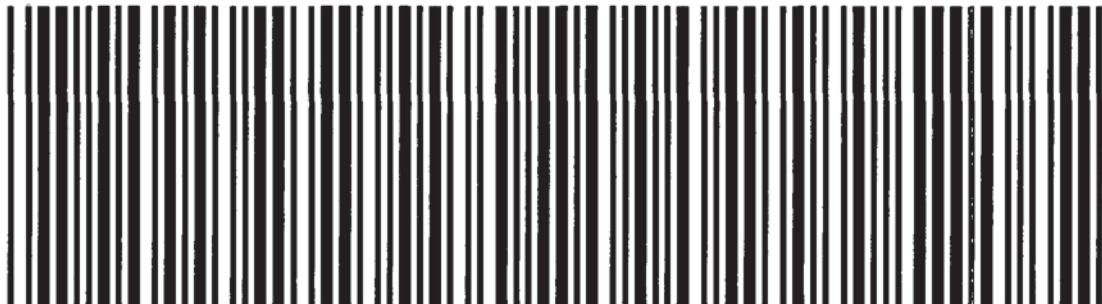


PROCESS SERVER DELIVERY DETAILS

Date: Tue, Oct 27, 2020

Server Name: Jim Sands

Entity Served	SIEMENS MOBILITY, INC.
Agent Name	C T CORPORATION SYSTEM
Case Number	34-2002-00286414
Jurisdiction	CA



SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

ACARA SOLUTIONS, INC., a New York business organization;
Additional Parties Form Attached

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Tommy Canterbury, as an individual

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
Superior Court Of California,
Sacramento
10/13/2020
cleurgans
By _____, Deputy
Case Number:
34-2020-00286414

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/sefhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/sefhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.suerte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.suerte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of California

CASE NUMBER:
(Número del Caso):

County of Sacramento, Hall of Justice Building, 720 9th Street, Room
102, Sacramento, California 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Ronald L. Zambrano, 350 South Grand Avenue, Suite 3350 Los Angeles, California 90071, (213) 927-3700

DATE:
(Fecha)

OCT 13 2020

Clerk, by
(Secretario)

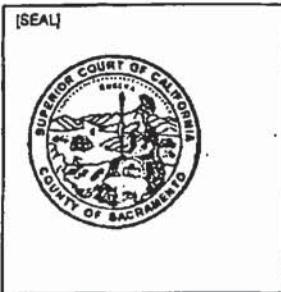
Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): Siemens Mobility, Inc., a Delaware business organization
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



SUMMONS

SUM-200(A)

SHORT TITLE: Canterberry v. Acara Solutions Inc, et al	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

SIEMENS MOBILITY, INC., a Delaware business organization; and DOES 1 through 10, inclusive,

Page ____ of ____
Page 1 of 1

1 Neama Rahmani (State Bar No. 223819)
2 Ronald L. Zambrano (State Bar No. 255613)
2 *ron@westcoasttriallawyers.com*
3 Sheena B. Tehrani (State Bar No. 326373)
3 *sheena@westcoasttriallawyers.com*
4 WEST COAST EMPLOYMENT LAWYERS, APLC
5 350 South Grand Avenue, Suite 3350
5 Los Angeles, California 90071
6 Telephone: (213) 927-3700
6 Facsimile: (213) 927-3701
7 Efilings@westcoasttriallawyers.com

8 Attorneys for Plaintiff
9 **TOMMY CANTERBERRY**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SACRAMENTO

12
13 **TOMMY CANTERBERRY, as an individual,**

Case No.:

14 Plaintiff;

15 **COMPLAINT FOR DAMAGES**

16 v.
17 **ACARA SOLUTIONS, INC., a New York business organization; SIEMENS**
18 **MOBILITY, INC., a Delaware business organization; and DOES 1 through 10, inclusive,**

1) **WRONGFUL TERMINATION IN VIOLATION OF GOVERNMENT § 12952 (FAIR CHANCE ACT)**

19 Defendants.

BY FAX

20 **DEMAND FOR JURY TRIAL**

21
22 COMES NOW the Plaintiff, **TOMMY CANTERBERRY**, (who hereinafter shall be referred to as the "Plaintiff" or as "CANTERBERRY"), who hereby respectfully alleges, avers, and complains, as follows:

23 //
24 //
25 //
26 //
27 //
28 //

INTRODUCTION

3 1. This is an action brought by the Plaintiff, TOMMY CANTERBERRY, pursuant to California
4 statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendants, ACARA
5 SOLUTIONS, INC., (hereinafter referred to as "ACARA"), and SIEMENS MOBILITY,
6 INC., (hereinafter referred to as "SIEMENS"), at all times herein mentioned.
7
8 2. Plaintiff alleges that California statutory, decisional, and regulatory laws prohibit the conduct
9 by Defendants herein alleged, and therefore Plaintiff has an entitlement to monetary relief on
10 the basis that Defendants violated such statutes, decisional law, and regulations.

JURISDICTION AND VENUE

14 3. Jurisdiction is proper in this court by virtue of the California statutes, decisional law, and
15 regulations, and the local rules under the Sacramento County Superior Court Rules.
16
17 4. Venue in this Court is proper in that Defendants ACARA and SIEMENS have each registered
18 with the State of California as a foreign corporation, and each regularly does business in
19 California and employs California citizens.

PARTIES

23 5. At all times herein mentioned Plaintiff, TOMMY CANTERBERRY, is and has been a
24 resident of Sacramento County, State of California.
25
26 6. Defendants, ACARA, is and at all times herein mentioned has been a New York corporation
27 registered with the State of California, with the capacity to sue and to be sued, and doing
28 business, in the state of California.

1 7. Defendants, SIEMENS, is and at all times herein mentioned has been a Delaware corporation
2 registered with the State of California, with the capacity to sue and to be sued, and doing
3 business, in the state of California.

4

5 8. Plaintiff is informed and believes and thereon alleges that each of the Defendants herein were
6 at all times the agent, employee, or representative of each remaining Defendant and were at
7 all times herein acting within and outside the scope and purpose of said agency and
8 employment. Plaintiff further alleges that as to each Defendant, whether named, or referred
9 to as a fictitious name, said Defendants supervised, ratified, controlled, acquiesced in,
10 adopted, directed, substantially participated in, and/or approved the acts, errors, or omissions,
11 of each remaining Defendant.

12

13 9. The true names and capacities of the Defendants named herein as DOES 1 through 10,
14 inclusive, whether individual, corporate, partnership, association, or otherwise, are unknown
15 to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff will
16 request leave of court to amend this Complaint to allege their true names and capacities at
17 such time as they are ascertained.

18

19 **FACTUAL ALLEGATIONS**

20

21 10. Plaintiff was hired by SIEMENS in or about February 5, 2019 as a temporary Welder through
22 ACARA.

23

24 11. In or around February 2019, Plaintiff passed a background check prior to joining SIEMENS
25 as a temporary Welder.

26

27 12. In or around January 2020, Plaintiff underwent a second background check with SIEMENS
28 to obtain a permanent position. SIEMENS claimed that there was new information in the

1 background check. ACARA also suspended its contract with Plaintiff.

2

3 13. Plaintiff was terminated on January 29, 2020.

4

5 14. Defendants terminated Plaintiff because of a felony conviction Plaintiff had in 2018 without
6 any efforts in obtaining any explanatory information from the Plaintiff regarding said
7 conviction.

8

9 15. Plaintiff has timely filed a Complaint of Discrimination with the Department of Fair
10 Employment and Housing and obtained a Right to Sue letter dated April 10, 2020. Plaintiff
11 also filed an amended Right to Sue letter dated April 13, 2020. As such, Plaintiff has
12 exhausted his administrative remedies to pursue claims under the Fair Employment and
13 Housing Act ("FEHA").

14

15 **FIRST CAUSE OF ACTION**

16 **(Wrongful Termination in Violation of Government Code §12952)**

17 **(Criminal History Discrimination)**

18 **(CANTERBERRY Against All Defendants)**

19

20 16. Plaintiff incorporates all paragraphs above as though fully set forth herein.

21

22 17. Defendant is a business entity regularly employing at least the minimum number of
23 employees upon which certain legal duties and obligations arise under various laws and
24 statutes, including the FEHA. At all times herein mentioned in this complaint, Government
25 Code §12900 were in full force and effect and were binding on the Defendants and the
26 Defendants were subject to their terms.

27 //

28 //

1 18. Plaintiff timely filed a complaint of discrimination with the Department of Fair Employment
2 and Housing alleging inter alia violations of Government Code §12952, fully exhausting
3 Plaintiff's administrative remedies, and has been issued a Right to Sue Letter, conferring
4 jurisdiction on this court over these claims.

5

6 19. Under the Fair Employment Housing Act, after an employer offers a candidate a job,
7 employers can conduct a criminal history check. Cal. Gov. Code § 12952. If the employer
8 intends to deny an applicant a position of employment solely or in part because of the
9 applicant's conviction history, the employer must make an individualized assessment about
10 a candidate's conviction history. Cal. Gov. Code § 12952(c)(1). This means that an employer
11 cannot take back the job offer without considering the nature and gravity of the criminal
12 history, the time that has passed since the conviction, and the nature of the job sought. Cal.
13 Gov. Code § 12952(c)(2). If the employer decides to take back the job offer based on a
14 candidate's criminal history, the employer must tell the candidate in writing, provide a copy
15 of any conviction history report the employer relied on, and give the candidate at least five
16 business days to respond. Cal. Gov. Code § 12952(c)(3). The employer must consider the
17 information the applicant submitted before making a final decision. Cal. Gov. Code §
18 12952(c)(4).

19

20 20. Plaintiff was hired by SIEMENS in or about February 5, 2019 as a Welder through ACARA.
21 Plaintiff was terminated on January 29, 2020. Defendants terminated Plaintiff because of a
22 felony conviction Plaintiff had in 2018.

23

24 21. Defendants failed to take the necessary steps in accordance with the § 12952, when learning
25 of Plaintiff's conviction. Specifically, in or around January 29, 2020, Defendants informed
26 Plaintiff not to show up to work that day. An on-site representative for ACARA, Kathleen
27 (last name unknown), called Plaintiff stating Plaintiff's contract with ACARA was
28 suspending pending an investigation into his background check, claiming something new

1 appeared. Plaintiff was terminated that same day.

3 22. As a direct and legal result of Defendants' conduct, and each of them, Plaintiff has suffered
4 and continues to suffer general, consequential, and special damages, including but not limited
5 to substantial losses in earnings, other employment benefits, physical injuries, physical
6 sickness, as well as emotional distress, plus medical expenses, future medical expenses, and
7 attorneys' fees, all to his damage in the amount according to proof.

9 23. Said actions justify the imposition of punitive damages in that Defendants committed the acts
10 alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of
11 injuring Plaintiff, from an improper and evil motives amounting to malice, and in conscious
12 disregard of Plaintiff's rights. Based upon the foregoing, Plaintiff is entitled to recover
13 punitive damages from Defendants, and each of them, in an amount according to proof.

PRAYER

17 1. For damages according to proof, including loss of earnings, deferred compensation, overtime
18 and other employment benefits;

19

20 2. For general damages, according to proof;

21

22 3. For other special damages according to proof, including but not limited to reasonable medical
23 expenses;

24

25 4. For prejudgment interest on lost wages and benefits;

26

27 5. For costs incurred by Plaintiff, including reasonable attorneys' fees and costs of suit, in
28 obtaining the benefits due Plaintiff and for violations of Plaintiff's civil rights through the

1 Fair Employment & Housing Act, as set forth above; and

2

3 6. For such other and further relief as the court deems just and proper.

4

5

6 Dated: October 1, 2020

WEST COAST EMPLOYMENT LAWYERS, APLC

7 By: 

8
9 Ronald L. Zambrano, Esq.
10 Sheena B. Tehrani, Esq.
11 Attorneys for Plaintiff
12 TOMMY CANTERBERRY

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands trial by jury.

15 Dated: October 1, 2020

WEST COAST EMPLOYMENT LAWYERS, APLC

16 By: 

17
18 Ronald L. Zambrano, Esq.
19 Sheena B. Tehrani, Esq.
20 Attorneys for Plaintiff
21 TOMMY CANTERBERRY

EXHIBIT B

RECEIVED
CIVIL DROP BOX

1 GREGORY G. ISKANDER, Bar No. 200215
2 YESENIA GARCIA PEREZ, Bar No. 264880
3 LITTLER MENDELSON, P.C.
4 Treat Towers
5 1255 Treat Boulevard, Suite 600
Walnut Creek, CA 94597
Telephone: 925.932.2468
Fax No.: 925.946.9809

2020 NOV 24 PM 1:44

60SSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

5 Attorneys for Defendant
6 SIEMENS MOBILITY INC.

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10 TOMMY CANTERBERRY, as an
individual,

Case No. 34-2020-002-86414

11 Plaintiff,

12
13 **DEFENDANT SIEMENS MOBILITY,
INC.'S ANSWER TO PLAINTIFF TOMMY
CANTERBERRY'S COMPLAINT**

v.

14 ACARA SOLUTIONS, INC., a New York
business organization; SIEMENS
15 MOBILITY INC., a Delaware business
organization; and DOES 1-10, inclusive,

16 Defendant.

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BY FAX

Defendant SIEMENS MOBILITY INC. (“Defendant”) hereby responds to the unverified Complaint (“Complaint”) filed by TOMMY CANTERBERRY (“Plaintiff”) as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant denies, generally and specifically, each and every allegation contained in the Complaint, and denies the Complaint as a whole as it relates to Defendant. Defendant further denies, generally and specifically, that Plaintiff has been injured in any amount by reason of any act or omission of Defendant or by anyone acting on Defendant's behalf or at their direction.

Without waiving or excusing any of Plaintiff's own burdens of proof and production of evidence, Defendant alleges the following separate and distinct affirmative defenses to each of the purported causes of action set forth in the Complaint, and reserves the right to assert additional affirmative defenses in the future:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each cause of action for relief set forth therein, fails to state a claim upon which relief may be granted and/or fails to state facts sufficient to constitute a valid cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

2. As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the equitable doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

(Estoppe l)

3. As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the

1 equitable doctrine of estoppel.

2 **FOURTH AFFIRMATIVE DEFENSE**

3 **(Laches)**

4 4. As a separate and distinct affirmative defense, Defendant alleges that the
5 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the
6 equitable doctrine of laches.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Unclean Hands)**

9 5. As a separate and distinct affirmative defense, Defendant alleges that the
10 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the
11 equitable doctrine of unclean hands.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 **(Equitable Consent)**

14 6. As a separate and distinct affirmative defense, Defendant alleges that the
15 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the
16 equitable doctrine of consent.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 7. As a separate and distinct affirmative defense, Defendant alleges that the
20 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, by the
21 applicable statutes of limitations, including, but not limited to, Government Code Section 12965.

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Legitimate Bases for Employment Decision)**

24 8. As a separate and distinct affirmative defense, Defendant alleges that
25 employment decisions regarding Plaintiff were made for legitimate, non-discriminatory reasons.

26 **NINTH AFFIRMATIVE DEFENSE**

27 **(No Violation of Public Policy)**

28 9. As a separate and distinct affirmative defense, Defendant alleges, that the

1 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, because
2 Plaintiff never experienced any wrongful employment action by Defendant, and Defendant committed
3 no violation of public policy.

4 **TENTH AFFIRMATIVE DEFENSE**

5 **(Did Not Contravene Established Public Policy)**

6 10. As a separate and distinct affirmative defense, Defendant alleges that the
7 Complaint, and each cause of action for relief set forth therein, is barred, in whole or in part, because
8 Defendant did not contravene any established public policy.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 **(Business Necessity, Lawful Business Reasons, And/Or Legitimate Business Purpose)**

11 11. As a separate and distinct affirmative defense, Defendant alleges, without
12 admitting that it engaged in any of the acts or omissions alleged in the Plaintiff's Complaint, that any
13 such acts or omissions were undertaken by reason of business necessity, for lawful business reasons,
14 and/or for legitimate business purposes which were necessary to the efficient operation of the business.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 **(Defendant Acted In Good Faith And With Good Cause)**

17 12. As a separate and distinct affirmative defense, Defendant alleges that the
18 Complaint, and each cause of action for relief set forth therein, is barred in whole or in part, because
19 good cause existed for each and every action taken by Defendant with respect to Plaintiff's application
20 and Defendant acted reasonably and in good faith at all times, based upon all relevant facts and
21 circumstances known by Defendant at the time it acted.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 **(Outside Course And Scope)**

24 13. As a separate and distinct affirmative defense, Defendant allege that the
25 Complaint, and each cause of action for relief set forth therein, is barred because, assuming *arguendo*
26 that any employee engaged in any unlawful conduct, such conduct was committed outside the course
27 and scope of such employee's employment, was not authorized, adopted or ratified by Defendant
28 and/or Defendant did not know nor should it have known of such conduct.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Notice Or Knowledge))

14. As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each cause of action for relief set forth therein, is barred because Defendant had no notice or knowledge of any alleged discriminatory, retaliatory, or unlawful conduct toward Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

(Damages Or Loss Proximately Caused By Plaintiff)

15. As a separate and distinct affirmative defense, Defendant alleges that any damage or loss sustained by Plaintiff was proximately caused by Plaintiff's own actions or inactions.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure To Mitigate)

16. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff is barred from obtaining any recovery against Defendant by reason of his failure to mitigate his alleged damages, if any, or, alternatively, any damages relief awarded to Plaintiff must be reduced or limited to the extent of such failure to mitigate.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Emotional Distress Caused By Other Factors)

17. As a separate and distinct affirmative defense, Defendant allege that the Complaint and each cause of action set forth therein, is barred in whole or in part because assuming *arguendo* that Plaintiff suffered any emotional distress (which Defendant denies), such emotional distress was proximately caused by factors other than the actions of Defendant or anyone acting on its behalf or in its employ.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure To State A Claim For Punitive Or Exemplary Damages)

18. As a separate and distinct affirmative defense, Defendant alleges that the Complaint fails to state a claim for punitive or exemplary damages.

111

111

NINETEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

19. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff is not entitled to recover punitive damages because the imposition of such damages violates the United States and California Constitutions, in that: (1) such damages are so punitive in purpose and effect as to constitute a criminal penalty, entitling Defendant to rights to be given to Defendant in criminal proceedings under the United States and California Constitutions; (2) such damages constitute an impermissible restriction on speech and a violation of the First Amendment of the United States Constitution; (3) the imposition of such damages would violate Defendant's rights to due process and/or equal protection under the law, under the United States and California Constitutions; and/or (4) the California punitive damages statute is unconstitutional in that it imposes an undue burden on interstate commerce.

TWENTIETH AFFIRMATIVE DEFENSE

(No Knowledge Justifying Punitive Damages)

20. As a separate and distinct affirmative defense, Defendant alleges that, without admitting any of the acts, conduct or statements attributed to it by Plaintiff's Complaint, Plaintiff's claim for punitive damages is barred because the acts, conduct or statements contained in Plaintiff's Complaint were not taken with the advance knowledge, conscious disregard, authorization, ratification, or act of oppression, fraud, or malice on the part of an officer, director, or managing agent of the corporation.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Unlawful Policy)

21. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's alleged damages were not proximately caused by any unlawful policy, custom, practice, and/or procedure promulgated and/or tolerated by Defendant

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Not Plaintiff's Employer)

22. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff

1 was not employed by Defendant, and even if Plaintiff was employed by Defendant, pursuant to the
2 terms and conditions of employment, employment was terminable at-will, by either party, with or
3 without cause.

4 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

5 **(Reservation of Rights)**

6 23. Defendant presently has insufficient knowledge or information upon which to
7 form a belief as to whether there may be additional, as yet unstated, defenses and reserves the right to
8 amend or supplement the affirmative defenses asserted herein, and to present evidence supportive of
9 different or additional defenses.

10 **PRAYER**

11 WHEREFORE, Defendant prays for judgment in Defendant's favor and against
12 Plaintiff as follows:

13 1. That the Complaint be dismissed in its entirety with prejudice;
14 2. That Plaintiff take nothing by virtue of this action;
15 3. That judgment be entered in favor of Defendant;
16 4. That Defendant be awarded attorneys' fees and costs of suit incurred herein;
17 and
18 5. For such other and further relief as the Court may deem proper.

21 Dated: November 24, 2020



22
23 GREGORY G. ISKANDER
YESENIA GARCIA PEREZ
LITTLER MENDELSON, P.C.
24 Attorneys for Defendant
25 SIEMENS MOBILITY INC.
26
27 4828-9353-1602.1 067219.1082
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GOSSC COURTHOUSE
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 200215; 264880 NAME GREGORY G. ISKANDER; YESENIA GARCIA PEREZ FIRM NAME: LITTLER MENDELSON, P.C. STREET ADDRESS: 1255 Treat Boulevard, Suite 600 CITY: Walnut Creek STATE: CA ZIP CODE: 94597 TELEPHONE NO.: 925.932.2468 FAX NO.: 925.946.9809 E-MAIL ADDRESS: Glskander@littler.com; YGarciaPerez@littler.com ATTORNEY FOR (name): Defendant SIEMENS MOBILITY INC.		CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Hall of Justice Building
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO 720 9 th Street, Room 102		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		PLAINTIFF/PETITIONER: TOMMY CANTERBERRY
DEFENDANT/RESPONDENT: ACARA SOLUTIONS, INC.; SIEMENS MOBILITY INC.		CASE NUMBER: 34-2020-002-86414
PROOF OF ELECTRONIC SERVICE		JUDICIAL OFFICER: DEPARTMENT:

1. I am at least 18 years old.

a. My residence or business address is (specify):
1255 Treat Boulevard, Suite 600, Walnut Creek, CA 94597

b. My electronic service address is (specify):
mkenner@littler.com

2. I electronically served the following documents (exact titles):

DEFENDANT SIEMENS MOBILITY, INC.'S ANSWER TO PLAINTIFF TOMMY CANTERBERRY'S COMPLAINT

The documents served are listed in an attachment. (Form POS-050(D)/EFS-050(D) may be used for this purpose.)

3. I electronically served the documents listed in 2 as follows:

a. Name of person served: SEE ATTACHED

On behalf of (name or names of parties represented, if person served is an attorney):
SEE ATTACHED

b. Electronic service address of person served:
SEE ATTACHED

c. On (date): November 24, 2020

The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment.
(Form POS-050(P)/EFS-050(P) may be used for this purpose.)

Date: November 24, 2020

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Monique Kenner

(TYPE OR PRINT NAME OF DECLARANT)

► /s/ Monique Kenner

(SIGNATURE OF DECLARANT)

Page 1 of 1



SHORT TITLE: TOMMY CANTERBERRY v. ACARA SOLUTIONS, INC.; SIEMENS MOBILITY INC., et al.	CASE NUMBER: 34-2020-002-86414
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ATTACHMENT TO PROOF OF ELECTRONIC SERVICE (PERSONS SERVED)

(This attachment is for use with form POS-050/EFS-050.)

NAMES, ADDRESSES, AND OTHER APPLICABLE INFORMATION ABOUT PERSONS SERVED:

<u>Name of Person Served</u>	<u>Electronic Service Address</u>	<u>Date of Electronic Service</u>
<i>(If the person served is an attorney, the party or parties represented should also be stated.)</i>		
Neama Rahman Ronald L. Zambran Sheena B. Tehrani Attorneys for Plaintiff, TOMMY CANTERBERRY	ron@westcoasttriallawyers.com; sheena@westcoasttriallawyers.com	Date: 11/24/20
John L. Barber Speros G. Mantas Attorneys for Defendant, ACARA SOLUTIONS, INC.	John.Barber@lewisbrisbois.com Speros.Mantas@lewisbrisbois.com	Date: 11/24/20
		Date: _____

EXHIBIT C

LEWIS BRISBOIS BISGAARD & SMITH LLP
JOHN L. BARBER, SB# 160317
E-Mail: John.Barber@lewisbrisbois.com
SPEROS G. MANTAS, SB# 328195
E-Mail: Speros.Mantas@lewisbrisbois.com
633 West 5th Street, Suite 4000
Los Angeles, California 90071
Telephone: 213.250.1800
Facsimile: 213.250.7900

Attorneys for Defendant ACARA SOLUTIONS,
INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

THOMAS CANTERBERRY, as an individual,

Plaintiff,

ACARA SOLUTIONS, INC., a New York business organization; SIEMENS MOBILITY, INC. a Delaware business organization; and DOES 1 through 10, inclusive.

Defendants.

Case No. 34-2020-00286414

DEFENDANT ACARA SOLUTIONS, INC.'S ANSWER TO COMPLAINT

Action Filed: 10/13/2020
FSC Date: None Set
Trial Date: None Set

COMES NOW the defendant, ACARA SOLUTIONS, INC. (hereinafter "Defendant"), answering the Complaint (hereinafter "Complaint") of Plaintiff, THOMAS CANTERBERRY (hereinafter "Plaintiff"), on file herein and admit, deny, and allege as follows:

GENERAL DENIAL

1. Under the provisions of section 431.30 of the California Code of Civil Procedure, Defendant denies each, every, and all of the allegations of the Complaint, and the whole thereof, and denies that Plaintiff has sustained damages in the sum alleged, or in any other sum, or at all.

2. Further answering Plaintiff's Complaint, and the whole thereof, Defendant denies that Plaintiff has sustained any injury, damage or loss by reasons of any act or omissions or negligence on the part of the answering Defendant or its agents or employees.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

3. Neither the Complaint nor any purported cause of action alleged therein state claims upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(No Actual Injury)

4. Plaintiff did not suffer an actual injury and therefore cannot recover damages.

THIRD AFFIRMATIVE DEFENSE

(No Regular Business Practice)

11 5. Plaintiff's Complaint fails to establish a regular business practice or unlawful
12 pattern of conduct by Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Plaintiff Did Not Sustain Any Damages)

15 6. Defendant is informed and believes and thereon alleges that Plaintiff's claim for
16 prejudgment interest pursuant to Civil Code section 3288 is barred because Plaintiff sustained no
17 damages.

FIFTH AFFIRMATIVE DEFENSE

(Consent)

20 7. Defendant is informed and believes and thereon alleges that Plaintiff, at all relevant
21 times, gave his consent, express or implied, to the alleged acts, omissions and conduct of
22 Defendant and its agents and employees.

SIXTH AFFIRMATIVE DEFENSE

(Unconstitutionality)

25 8. The Complaint seeks damages not properly recoverable against Defendant nor
26 constitutional.

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SEVENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

3 9. Plaintiff has a duty to use such means as are reasonable under the circumstances to
4 avoid or minimize the damages that result from statutory violations (if any). To the extent there
5 was any statutory violation (which is not admitted but considered solely for purposes of this
6 affirmative defense), Plaintiff unreasonably failed to avoid or reduce harm. This includes
7 Plaintiff's obligation to utilize Defendant's internal complaint procedures and timely bring that to
8 the attention of a supervisor and Defendant's management so that if there was any violation, it
9 would be promptly corrected and remedied. Plaintiff is therefore barred from any recovery based
10 on any harm that could have been reasonably avoided.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

13 10. Defendant is informed and believes and thereon alleges that Plaintiff has waived
14 any and all claims that he may have had against Defendant arising from the transactions and
15 occurrences set forth in the Complaint. Defendant may learn facts in written discovery and/or at
16 Plaintiff's deposition that may demonstrate Plaintiff engaged in conduct that would constitute a
17 waiver, which would allow Defendant to assert the equitable remedy of waiver at the time of trial.
18 Defendant further allege that Plaintiff may have consented to and/or waived any and all rights he
19 may have had relative to the matters alleged in the Complaint by failing, refusing and neglecting
20 to properly perform her obligations thereunder and by undertaking other conduct, the exact nature
21 of which will be inserted herein by amendment or proved at the time of trial. Plaintiff is barred in
22 whole or in part because such claims have been waived, discharged, abandoned, and/or released.

NINTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

25 11. Plaintiff's Complaint is limited or subject to an absolute bar as to recoverable
26 damages based on after-acquired evidence Defendant has presently and/or may acquire during the
27 course of this litigation.

TENTH AFFIRMATIVE DEFENSE

(Estoppel)

3 12. Defendant is informed and believes and thereon alleges that Plaintiff is estopped by
4 Plaintiff's own conduct from asserting any and all claims Plaintiff may have had against
5 Defendant arising from the transactions and occurrences set forth in the Complaint. Defendant
6 may learn facts in written discovery and/or at Plaintiff's deposition that may demonstrate
7 Plaintiff's own wrongful conduct caused or contributed to the allegations set forth in the
8 Complaint, which would allow Defendant to assert the equitable remedy of estoppel at the time of
9 trial.

ELEVENTH AFFIRMATIVE DEFENSE
(Satisfaction of Claim)

12 13. Plaintiff is entirely, or alternatively, partially, barred from recovery in this action to
13 the extent that he has received consideration from Defendant or from anyone else in satisfaction of
14 any purported claim against Defendant.

TWELFTH AFFIRMATIVE DEFENSE

(Immunity)

17 14. Defendant is informed and believes and thereon alleges that Plaintiff's Complaint,
18 and each and every cause of action set forth therein alleged against Defendant, are barred, in
19 whole or in part, because actions taken with respect to Plaintiff's employment, if any, were based
20 on an honest, reasonable, and good faith belief in the facts as known and understood at the time
21 and are therefore immune from any liability.

THIRTEENTH AFFIRMATIVE DEFENSE

24 15. Defendant is informed and believes and thereon alleges that Plaintiff's causes of
25 action are barred as Plaintiff has failed to satisfy the statutory prerequisites to sue and exhaust
26 administrative remedies under the California Labor Code, and/or any applicable administrative
27 remedy. Defendant is informed and believes and thereon alleges that all causes of action within
28 the Complaint are barred because Plaintiff has failed to satisfy the statutory prerequisites to sue

1 and to exhaust administrative remedies under the Fair Employment and Housing Act (“FEHA”),
2 Government Code sections 12940, et seq. or the Equal Employment Opportunity Commission
3 (“EEOC”), and/or any other applicable administrative remedy.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 **(Laches)**

6 16. Plaintiff’s claims as set forth in the Complaint are barred by the equitable doctrine
7 of laches.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 **(Unclean Hands)**

10 17. Defendant is informed and believes and thereon alleges that Plaintiff’s Complaint is
11 barred, in its entirety, by the Doctrine of Unclean Hands. Defendant may learn facts in written
12 discovery and/or at Plaintiff’s deposition that may demonstrate Plaintiff’s own wrongful conduct
13 caused or contributed to the allegations set forth in the Complaint, which would allow Defendant
14 to assert the equitable remedy of unclean hands at the time of trial.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 **(No Entitlement to Punitive Damages)**

17 18. Defendant is informed and believes and thereon alleges that the Complaint, and
18 each and every cause of action set forth therein alleged against Defendant, fails to state facts
19 sufficient to recover punitive or exemplary damages or to show that Defendant was guilty of
20 malice, oppression or fraud as required by Code of Civil Procedure section 3294.

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 **(No Malice, Fraud, Oppression)**

23 19. Defendant is informed and believes and thereon alleges that its actions were not
24 willful, malicious, fraudulent, oppressive, intentional, or tortious and Plaintiff’s claim is not
25 authorized pursuant to Civil Code section 3294.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 **(Procedural Due Process)**

28 20. Plaintiff’s Complaint, to the extent that it seeks punitive or exemplary damages,

1 violates the rights of Defendant to procedural due process under the Fourteenth Amendment to the
2 United States Constitution and under the Constitution of the State of California and, therefore,
3 fails to state a cause of action upon which punitive or exemplary damages may be awarded.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 **(Plaintiff's Acts)**

6 21. Defendant is informed and believes and thereon alleges that Plaintiff's damages, if
7 any, were caused by Plaintiff's intentional or negligent acts, thus barring or limiting Plaintiff's
8 right of recovery.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 **(Indemnification)**

11 22. Defendant is informed and believes and thereon alleges that all of the acts and/or
12 omissions alleged in the Complaint were solely, entirely, and fully those of other Defendant(s)
13 and/or parties named or unnamed herein other than Defendant, and that therefore such parties are
14 fully and solely liable to Plaintiff and that Defendant are entitled to total or complete
15 indemnification from such parties, including, but not limited to, any and all damages, costs, and
16 attorney's fees that may be sustained as a result of Plaintiff's claims.

17 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

18 **(Statute of Limitations)**

19 23. Plaintiff's Complaint, and each and every cause of action therein, is barred by the
20 applicable statutes of limitations.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Good Faith Belief)**

23 24. Defendant is informed and believes and thereon alleges that Plaintiff's Complaint,
24 and each and every cause of action set forth therein alleged against Defendant, is barred, in whole
25 or in part, because actions taken with respect to Plaintiff's employment, if any, were based on an
26 honest, reasonable, and good faith belief in the facts as known and understood at the time.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Proximate Cause)

25. The alleged damages of Plaintiff was not proximately caused by an unlawful policy, custom, practice or procedure promulgated by Defendant.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(At-Will Employment - Labor Code § 2922)

26. Defendant alleges upon information and belief that Plaintiff was an "at-will" employee, as defined by California Labor Code section 2922 and that, accordingly, Plaintiff was subject to termination at any time, with or without cause.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Breach of Duties)

27. Plaintiff's claims are barred, in whole or in part, by his own breach of the duties owed to Defendant under California Labor Code sections 2856, 2857, 2858 and 2859.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Legitimate Business Reason/Business Justification)

28. Defendant's activities undertaken with respect to Plaintiff were justified as such activities were proper, fair, and legitimate business activities and/or due to business-related reasons which were neither arbitrary, capricious nor unlawful.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

29. If Plaintiff suffered any damages as a result of the facts alleged in the Complaint, which Defendant denies, Plaintiff is not entitled to recover the amount of damages alleged or any damages due to his failure to make reasonable efforts to mitigate or minimize the damages incurred.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Privileges)

30. Defendant is entitled to all privileges available to it to the extent provided by the California *Civil Code*. Defendant's conduct with regard to Plaintiff was privileged, justified, and

1 in good faith.

2 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

3 **(Speculative Damages)**

4 31. Plaintiff is precluded from recovering the damages alleged in the Complaint
5 because those damages are too vague, uncertain, and speculative to permit recovery.

6 **THIRTIETH AFFIRMATIVE DEFENSE**

7 **(Ratification)**

8 32. Defendant is informed and believes and thereon alleges that Plaintiff and/or any
9 agents of Plaintiff, at all times, ratified the acts, purported omissions, representations, and/or other
10 conduct of Defendant as alleged in Plaintiff's Complaint.

11 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

12 **(Discretionary Acts)**

13 33. Defendant alleges that any and all conduct of which Plaintiff complains and which
14 is attributed to Defendant or its agents or employees was a just and proper exercise of
15 management's discretion on the part of Defendant and its agents or employees, and was
16 undertaken for a fair and honest reason and regulated by good faith under the circumstances
17 existing at all times mentioned in Plaintiff's Complaint.

18 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

19 **(Mixed-Motive)**

20 34. At the time Plaintiff was terminated, there existed legitimate reasons to terminate
21 Plaintiff which, standing alone, would have induced Defendant to make the same decision to
22 terminate Plaintiff's employment. Therefore, Plaintiff is precluded from recovery of
23 reinstatement, back pay, or damages because of the mixed motive doctrine. (*Harris v. City of*
24 *Santa Monica* (2013) 56 Cal.4th 203, 232.)

25 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Lack of Pretext)**

27 35. Defendant alleges that Plaintiff cannot establish that Defendant's articulated reason
28 for Plaintiff's separation from employment was a pretext for unlawful violation of public policy.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Public Policy)

3 36. Defendant is informed and believes and thereon alleges that Plaintiff's purported
4 cause of action for wrongful termination in violation of Government § 12952 (Fair Chance Act)
5 fails to state facts sufficient to constitute a cause of action.

THIRTY-FIFTH AFFIRMATIVE DEFENSE
(No Wrongful Termination)

8 37. Defendant is informed and believes and thereon alleges that Plaintiff's purported
9 causes of action for wrongful termination in violation of Government § 12952 (Fair Chance Act)
10 fails as Plaintiff cannot establish a prima facie case of wrongful termination.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(No Adverse Employment Action)

38. Plaintiff's causes of action are barred in that Plaintiff suffered no adverse
employment action during Plaintiff's employment.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

17 39. Plaintiff is not entitled to any equitable or injunctive relief as prayed for in the
18 Complaint because Plaintiff has suffered no irreparable injury based upon any alleged conduct of
19 Defendant, and Plaintiff has an adequate remedy at law for any such conduct.

THIRTY-EIGHTH AFFIRMATIVE DEFENSE
(No Tangible Loss of Benefits)

22 40. Plaintiff's Complaint, and each purported cause of action therein, are barred
23 because Plaintiff did not suffer any tangible loss of employment benefits as a direct and proximate
24 result of the alleged conduct by Defendant.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(Frivolous Claims)

27 41. Defendant is informed and believes and thereon alleges that Plaintiff's Complaint
28 and the purported cause of action therein was not brought in good faith and is frivolous. Therefore,

1 the relief requested is precluded and Defendant is entitled to recover its reasonable expenses,
2 including attorneys' fees, incurred herein as a matter of law pursuant to this Court's inherent
3 authority and California Code of Civil Procedure section 128.7.

4 **FORTIETH AFFIRMATIVE DEFENSE**

5 **(Superseding, Intervening Conduct of Third Parties)**

6 42. Should Defendant be found liable for any damages claimed by Plaintiff, which
7 Defendant specifically denies, Defendant alleges that such damages were proximately caused
8 and/or contributed to by parties other than Defendant, whether served or not served in this case,
9 and/or by other persons or entities not presently parties to this action. It is necessary that the
10 proportionate degree of negligence, fault, and/or legal responsibility of each and every person or
11 entity be determined and prorated and that any judgment that may be rendered against Defendant
12 be reduced not only by the degree of negligence, fault or other legal responsibility attributable to
13 Plaintiff, but by the total of that degree of negligence, fault and/or other legal responsibility found
14 to exist as to other person(s) and/or entities as well.

15 **FORTY-FIRST AFFIRMATIVE DEFENSE**

16 **(Comparative Negligence of Third Parties)**

17 43. Should Defendant be found liable for any damages claimed by Plaintiff which was
18 caused and/or contributed to by parties other than this answering Defendant, whether served or not
19 served in this case, and/or other persons or entities not presently parties to this action, the
20 proportionate degree of negligence, fault, and/or legal responsibility of each and every person or
21 entity must be determined and prorated and any judgment which may be rendered against this
22 answering Defendant must be reduced not only by the degree of negligence, fault or legal
23 responsibility attributable to Plaintiff, but also by the total of that degree of negligence, fault
24 and/or other legal responsibility found to exist as to the other parties, persons and/or entities as
25 well.

26 **FORTY-SECOND AFFIRMATIVE DEFENSE**

27 **(FEHA Notice)**

28 44. Defendant is informed and believes and thereon alleges that Plaintiff's claims for

1 relief pursuant to the FEHA are barred because Defendant had no notice of any alleged violation
2 thereof.

3 **FORTY-THIRD AFFIRMATIVE DEFENSE**

4 **(Arbitration Agreement)**

5 45. The Complaint as a whole, and each purported cause of action alleged therein, is
6 barred in whole or in part to the extent that Plaintiff or other employees signed legally valid
7 agreements to arbitrate any dispute, claim or controversy arising out of their employment.
8 Defendant is ascertaining whether or not such arbitration agreements exist.

9 **FORTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(Unknown Defenses)**

11 46. Defendant alleges that if, and to the extent that Defendant may be entitled to further
12 defenses of which it is presently unaware, it reserves the right to amend this answer to plead such
13 additional and further affirmative defenses as they become known.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment that:

3 1. Plaintiff takes nothing by reason of the Complaint on file herein or any of
4 Plaintiff's purported claims for relief;

5 2. The Complaint be dismissed with prejudice in its entirety;

6 3. Judgment be entered in favor of Defendant and against Plaintiff on all
7 claims for relief;

8 4. Defendant be awarded its reasonable attorneys' fees and costs of the suit
9 incurred herein;

10 5. The Court award Defendant such other and further relief as it deems just
11 and proper.

13 | DATED: November 23, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By:



SPEROS G. MANTAS
Attorneys for Defendant ACARA SOLUTIONS,
INC.

CALIFORNIA STATE COURT PROOF OF SERVICE
Tommy Canterbury v Acara Solutions, Inc., et al.
Case No. 34-2020-00286414

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

On November 23, 2020, I served true copies of the following document(s): DEFENDANT ACARA SOLUTIONS, INC.'S ANSWER TO COMPLAINT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

9 Neama Rahmani, Esq.
Ronald L. Zambrano, Esq.
Sheena B. Tehrani, Esq.
10 West Coast Employment Lawyers, APLC
350 South Grand Avenue, Suite 3350
11 Los Angeles, CA 90071
Attorneys for Plaintiff
Tommy Canterbury
Phone: (213) 927-3700
Fax: (213) 927-3701
ron@westcoasttriallawyers.com
sheena@westcoasttriallawyers.com

The documents were served by the following means:

(BY ELECTRONIC TRANSMISSION ONLY) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed above based on notice provided on March 16, 2020 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 23, 2020, at Los Angeles, California.

Heather Norton
Heather Norton

EXHIBIT D

From: [Iskander, Gregory](#)
To: [Mantas, Speros](#)
Cc: [Garcia Perez, Yesenia](#); [Barber, John](#)
Subject: RE: Canterbury v. Acara Solutions, Inc., et al.
Date: Monday, November 23, 2020 2:25:52 PM
Attachments: [image001.png](#)
[image002.png](#)

Confirmed. Thanks.

Gregory Iskander

Attorney at Law
925.927.4543 direct, 925.209.3560 mobile, 925.946.9809 fax
GIskander@littler.com



Labor & Employment Law Solutions | Local Everywhere
Treat Towers, 1255 Treat Blvd, Suite 600, Walnut Creek, CA 94597

From: Mantas, Speros <Speros.Mantas@lewisbrisbois.com>
Sent: Monday, November 23, 2020 1:02 PM
To: Iskander, Gregory <GIskander@littler.com>
Cc: Garcia Perez, Yesenia <YGarciaPerez@littler.com>; Barber, John <John.Barber@lewisbrisbois.com>
Subject: Canterbury v. Acara Solutions, Inc., et al.

Hi Greg and Yesenia,

This email is to confirm that Acara Solutions, Inc. consents to removal of the above referenced matter to federal court. It is our understanding that Siemens Mobility, Inc. also consents to removal. Please confirm at your earliest. Thank you.

Best,



T: 213.599.7890 F: 213.250.7900

633 W. 5th Street, Suite 4000, Los Angeles, CA 90071 | [LewisBrisbois.com](#)

[Representing clients from coast to coast. View our locations nationwide.](#)

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